IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4120 OF 2005

Shri.V.N.Nadkarni ..Applicant

Vs.

State of Maharashtra & Anr. ..Respondents

...

Mr.A.H.H.Ponda Advocate for Applicant
Ms.S.V.Gajare A.P.P. for State
Ms.Rohini Wagh for Respondent No.2

...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : AUGUST 30,2005

P.C.

1. Heard the learned advocate for the applicant and the learned Advocate for the Respondent no.2 i.e. original complainant.

2. The applicant is seeking quashing of process issued by the learned Spl.Metropolitan Magistrate, Court Room No.25 Mumbai in C.C.No.1732/S/2002. In the said case, process was issued against the applicant under Section 138 of N.I.Act.

3. The applicant had preferred applications for recalling of process before the learned Magistrate. The learned Magistrate has rejected the said applications. In view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal reported in 2004(4) Mh.L.J.274**, it is clear that the Magistrate has no power to recall the process. In this view of the matter though the Magistrate has rejected the applications for recall of process, I am not inclined to interfere with the said order.

4. However, for the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, I am of the opinion that the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicant prefers revisions before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the applicant to prefer the necessary revisions before the concerned Sessions Court. It is made clear that the revisions shall be preferred in respect of order of the Magistrate issuing process and not in respect of order rejecting the applications for recall of process. The learned advocate for the applicant makes a statement that the necessary revisions will be preferred within five weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of five weeks. The learned advocate for the respondent no.2-original complainant fairly states that no objection will be raised in respect of delay in filing of revisions.

6. On the necessary revisions being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matters on merits expeditiously after hearing the necessary parties.

7. It is submitted that in the aforesaid case, NBW came to be issued against the applicant. It is

prayed that the said NBW be quashed. I am not inclined to quash NBW as in my opinion, it would be appropriate that the applicant prefers application before the trial Court for setting aside the said NBW.

8. Liberty is granted to the applicant to prefer the necessary application for setting aside NBW before the trial Court. The learned advocate for the applicant states that the necessary application for setting aside NBW, will be preferred within five weeks from today. In order to enable the applicant to take necessary steps for setting aside NBW, the said NBW is stayed for a period of five weeks from today.

9. Criminal Application is disposed of.

10. Authenticated copy be issued to the parties.

[V.K.TAHILRAMANI,J.]